NO. 81946-7

SUPREME COURT OF THE STATE OF WASHINGTON

JIM A. TOBIN,

Respondent,

v.

DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON,

Petitioner.

CORRECTED STATEMENT OF ADDITIONAL AUTHORITIES

Comes now the petitioner and submits the following additional authorities to the Court, pursuant to RAP 10.8:

- RCW 51.24.060(1)(c)(ii) (requiring Department to pay share of costs and attorneys' fees based on "gross recovery," regardless of amount reimbursed):

> The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary.

- *Courtright v. Sahlberg Equip., Inc.*, 88 Wn.2d 541, 545, 563 P.2d 1257 (1977) (Department's reimbursement right against a third

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party recovery applied directly to the recovery itself, and could not be reduced by the worker's comparative negligence):

> It might very well be that it would be wiser to provide by legislation for the result contended for by [appellant]. We may not, however, under the guise of construction substitute our view for that of the legislature. . . . We are not a super legislature.

- *Crown Zellerbach Corp. v. Dep't of Labor & Indus.*, 98 Wn.2d 102, 108-9, 653 P.2d 626 (1982) (upholding Department's method of assessing Industrial Insurance premiums for self-insured employers formerly covered by state fund):

> Appellant's obligations in this situation are not governed by insurance principles applicable to private insurance contracts. Our workers' compensation system is in fact an industrial insurance act. In the context of *Stertz v. Industrial Ins. Comm'n*, 91 Wash. 588, 158 P. 256 (1916), this means that the employer satisfies its obligations to injured workers by payment of premiums to the Department, and it is then the Department which pays out benefits to and on behalf of injured workers.
>
> As this court stated in *Stertz*, at page 594, 158 P. 256, our act is "an industrial insurance statute." It is not the equivalent of an insurance contract. The Legislature may alter the employers' responsibilities. In the past, the Legislature has directed the Department to collect sums which under general insurance principles would not be collectible. . . . This has been held to be a valid and constitutional exercise of legislative power even though it would appear to certainly violate standard insurance principles. *Washington State Sch. Directors Ass'n v. Department of Labor & Indus.*, 82 Wn.2d 367, 510 P.2d 818 (1973). . . .

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> In short, ours is an industrial insurance statute, but is not necessarily the equivalent of an insurance contract in all respects. The Legislature can and indeed has placed conditions on the Industrial Insurance Act. . . .

RESPECTFULLY SUBMITTED this ____ day of December, 2009.

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DECLARATION OF SERVICE

On this day set forth below, I emailed and deposited with the U.S. Postal Service via Consolidated Mail Service a true and accurate copy of the Statement of Additional Authorities in Supreme Court Appeals Cause No. 81946-7 to the following parties:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of December, 2009, at Tumwater, Washington.

Shellie O'Neal, Legal Assistant